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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Rulemaking to Amend Part 1 and Part 21 of the
Commission's Rules to Redesignate the 27.5 - 29.5
GHz Frequency Band, to Reallocate the 29.5 - 30
GHz Band, and to Establish Rules and Policies for
Local Multipoint Distribution Service and for Fixed
Satellite Services

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) CC Docket No. 92-297
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**COMMENTS IN RESPONSE TO
FOURTH NOTICE OF PROPOSED RULEMAKING**

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its initial comments in response to the *Fourth Notice of Proposed Rulemaking* (the "*Fourth NPRM*") portion of the *First Report and Order and Fourth Notice of Proposed Rulemaking* released on July 22, 1996 in the captioned proceeding.^{1/}

As the trade association of the wireless cable industry, WCA has had a long-standing interest in the 28 GHz band in general, and in this proceeding in particular.^{2/} Although the vast

^{1/}*Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, FCC 96-311 (rel. July 22, 1996)[hereinafter cited as "*Fourth NPRM*"].

^{2/}*See, e.g.* Comments of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed Aug. 28, 1996); Comments and Request to Participate of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed March 18, 1994); Reply Comments of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed Aug. 28, 1996).
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majority of the wireless cable systems operating today employ the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") channels in the 2.1 GHz and 2.5 GHz bands, the wireless cable industry is not limited to those bands alone. Indeed, wireless operators have constructed systems utilizing Low Power Television Service stations operating in the VHF and UHF bands and Private Operational Fixed Microwave Service stations in the 18 GHz band. Wireless cable operators have also explored the viability of the 28 GHz band and a variety of other bands for use in connection with their operations.^{3/} Thus, WCA is pleased that the Commission has decided to reallocate a portion of the 28 GHz band for LMDS.

In the *Fourth NPRM*, the Commission recognizes that "to ensure that there is adequate two-way interactive capacity for the various proposed LMDS systems, we . . . need to designate

^{2/}(...continued)

297 (filed April 15, 1993); Comments of Wireless Cable Ass'n Int'l, CC Docket No. 92-297 (filed Mar. 16, 1993); Comments of Wireless Cable Ass'n Int'l, RM 7872 (filed Jan. 15, 1992); Opposition of Wireless Cable Ass'n Int'l, PP-22 (filed Jan. 15, 1992); Letter of Paul J. Sinderbrand, Esq. to Donna R. Searcy, File No. 10380-CF-P-88 (dated June 14, 1989); Letter of Paul J. Sinderbrand, Esq. to Donna R. Searcy, File No. 10380-CF-P-88 (dated July 6, 1989); Letter of Paul J. Sinderbrand, Esq. to Hon. Alfred C. Sikes, File No. 10380-CF-P-88 (dated Nov. 1, 1989).

^{3/}For example, the Commission has correctly recognized that the wireless cable industry "may find the two-way capacity of LMDS services appropriate for the provision of local telephone services in competition with LECs." *Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 -30.0 GHz Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 11 FCC Rcd 53, 93 (rel. July 28, 1995)[hereinafter cited as "*Third NPRM*"].

additional spectrum for LMDS.”^{4/} WCA agrees that there may be potential users of LMDS spectrum that require more spectrum than can be made available at 28 GHz, and therefore supports the Commission’s proposal to reallocate the 31.0-31.3 GHz band for LMDS use. The Commission has correctly observed that because existing use of the 31.0-31.3 GHz band is relatively light, and because existing users of that band have no rightful expectation of protection from interference, the 31.0-31.3 GHz band can be readily reallocated for LMDS use.^{5/}

In developing a licensing system for LMDS, however, the Commission should recognize that not all LMDS system operators will necessarily want to make use of the 31.0-31.3 GHz band. As the *Third NPRM* reflects, there are potential applications for LMDS that do not even require all of the spectrum being made available in the 28 GHz band.^{6/} Moreover, because of the added costs associated with using both the 28 GHz band and the 31.0-31.3 GHz band, many LMDS operators will opt to only employ the former. WCA therefore urges the Commission to employ one of two licensing schemes for LMDS, either of which will promote more efficient use of the 31.0-31.3 GHz frequency band.

WCA believes that the most efficient mechanism for licensing the LMDS spectrum is to award separate licensees for the 28 GHz and 31.0-31.3 GHz bands in each market. The Commission has recognized in this proceeding that “flexible service rules will . . . promote the

^{4/}See *Fourth NPRM*, at ¶ 100.

^{5/}See *id.* at ¶ 102.

^{6/}See *Third NPRM*, 11 FCC Rcd at 82-83

efficient use of scarce spectrum by allowing providers to adjust and respond to changes in technology and market demand.”²⁷ By the same token, offering LMDS applicants the option of securing less than all of the spectrum allocated for LMDS will promote spectrum efficiency by allowing service providers to secure bandwidth closely tailored to their chosen technology and market demand. Because LMDS has been established as a flexible service, different licensees will need different amounts of spectrum. If the Commission decides to award only a single LMDS authorization in each service area, it could effectively preclude certain services -- services that are only economically viable if the provider can bid upon and acquire authorizations for less than all of the available bandwidth

Fortunately, because the Commission will be employing auctions to award LMDS authorizations, the Commission can avoid unnecessarily precluding valuable services that require limited bandwidth. By using simultaneous, multiround auctions to award LMDS authorizations, the Commission can accommodate those who desire access to both of the 28 GHz or 31.0-31.3 GHz LMDS allocations, as well as those that desire access to only one or the other. However, WCA suggests one change to the Commission’s usual approach to simultaneous, multiround auctions. The Commission should restructure its bid withdrawal provisions so that an applicant needing both allocations in a BTA can withdraw a high bid for one without penalty if it ceases bidding on the other allocation in the same market. To take advantage of this right to withdraw

²⁷*Id.* at 56.

a high bid after conclusion of a round, the bidder must have been an active bidder^{8/} in the prior round on more than one license for the BTA, and must have been the high bidder on at least one license at the close of that prior round. When these circumstances are met, the bidder should be permitted to withdraw its high bid before the start of the next round, but in doing so should forfeit its right to bid in subsequent rounds for any license in that particular BTA. In this way, a bidder needing more than one license for its planned service will not be harmed if it cannot acquire all of the needed bandwidth at an acceptable price.

Although WCA believes it to be a less satisfying alternative, if the Commission does not decide to separately license the 31.0-31.3 GHz band, it should provide LMDS auction winners with the ability to disaggregate that frequency band. The Commission has previously proposed to permit spectrum disaggregation in this proceeding,^{9/} and just last month reiterated the substantial public interest benefits of permitting spectrum disaggregation.^{10/} However, disaggregation presents thorny questions of unjust enrichment where, as apparently will be the case with LMDS, some bidders will enjoy bidding credits, installment payment plans or other

^{8/}In other words, even if the bidder was not the high bidder for that license, it must have made a bid during the round that exceeded the minimum acceptable bid for the round.

^{9/}See *Third NPRM*, 11 FCC Rcd at 83-84.

^{10/}See *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, WT Docket No. 96-148, FCC 96-287, at 11 (rel. July 15, 1996).

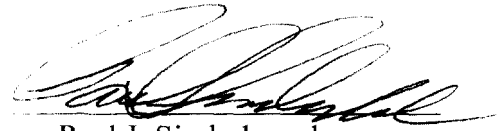
benefits.^{11/} Separate licensing of the two LMDS bands avoids the need to address these problems, and thus presents the better of the two possible approaches.

WHEREFORE, for the foregoing reasons, WCA urges the Commission to adopt the proposed reallocation of the 31.0-31.3 GHz band for LMDS, subject to the qualifications set forth above.

Respectfully submitted,

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^{11/}See *id.* at 21-24.